

• DP-300566

IN THE CLAIMS

Please cancel Claims 33-35 without prejudice.

REMARKS

The Examiner has required restriction pursuant to 35 U.S.C. §121. The Examiner contends that: Group I, Claims 1-32, is drawn to a method of manufacturing a sensor, classified in class 156, subclass 89.11, while Group II, Claim 33, is drawn to a sensor, classified in class 204, subclass 424, and Group III, Claims 34-35, is drawn to a method of using a sensor, classified in class 205, subclass 784.5. Pursuant to MPEP §806.05(f), MPEP §806.05(e), MPEP §806.05(i), and 35 U.S.C. §121 the Examiner requires restriction between Groups I, II, and III. Applicants respectfully traverse this restriction.

Pursuant to MPEP §806.05(f), restriction is required between Groups I and II. It is alleged that "[i]n the instant case because the product does not appear to be bound by the particular method of the process (see claim 33), the product can be made by individually sintering the various components before assembly." (Paper 3, page 2) The claims and specification of the present application are directed to co-firing and co-fired sensors and zirconia-alumina bodies. It is well known in the art that there are differences, and different problems and issues associated with, co-fired sensors and sensors comprising separately sintered components. The claims of the present application specifically state "co-firing" to form the sensor. Claim 33 is the sensor of Claim 16. Consequently it is a co-fired sensor. This claim (Group II) does not meet the requirements for restriction set forth in MPEP §806.05(f) and should not be restricted from Group I.

With respect to the restriction between Groups I and III, it is stated that "Since the product is not allowable, restriction is proper between said method of making and method of using." Applicants respectfully disagree that the "product is not allowable." The product has not been examined at this point, and therefore, there are no grounds to state it is unallowable.

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Further although it is stated that "[t]he product claim will be examined along with the election invention (MPEP §806.05(i))." This statement is revoked with the statement that "[w]ith respect to... the product being examined with either process or making or the process of using, the sentence does not appear to apply in the instant situation because the examiner has already shown a distinction between all three inventions..." (Paper 3, page 3). Applicants respectfully traverse that valid reasons for restriction have been set forth by the Examiner. As previously stated, the distinction relied upon between Groups I and II is not proper. Further, there is no showing that the product is not patentable, thereby removing the alleged basis for restricting between Groups I and III. Accordingly, reconsideration and withdrawal of this restriction requirement is requested.


Although Applicants request reconsideration and withdrawal of this Restriction Requirement, in order to meet the requirements of 37 C.F.R. §1.143, Applicants hereby provisionally elect to prosecute Group I, Claims 1-32, with traverse. This election is being made without prejudice to Applicants' rights with respect to Claim 33, Group II, and Claims 34-35, Group III, including the right to file divisional application(s) thereon.

If there are any charges with respect to this Restriction Requirement, or otherwise, please charge them to Deposit Account No. 50-0831 maintained by Assignee.

Respectfully submitted,

POLIKARPUS, ET AL.

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